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|--|-------------|----------------------|-------------------------------|------------------|
| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO. |
| 10/749,461   | 12/31/2003  | L. Warren Collier IV | K-C 17983                     | 3946             |
| 7590<br>Pauley Petersen & Erickson<br>Suite 365<br>2800 West Higgins Road<br>Hoffman Estates, IL 60195 |             |                      | EXAMINER<br>YAO, SAMCHUAN CUA |                  |
|  |             |                      | ART UNIT                      | PAPER NUMBER     |
|  |             |                      | 1733                          |                  |
| SHORTENED STATUTORY PERIOD OF RESPONSE   |             | MAIL DATE            | DELIVERY MODE                 |                  |
| 3 MONTHS   |             | 12/28/2006           | PAPER                         |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/749,461

Applicant(s)

COLLIER ET AL.

Examiner

Sam Chuan C. Yao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-20,40,41,58,59 and 64-69 is/are pending in the application.
- 4a) Of the above claim(s) 40 and 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-20,58,59 and 64-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 7-8, 12-15, 17-18, 20, and 58-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Panlanco et al (US 2003/0118816) in view of Yeo et al (US 5,599,420)

Panlanco et al discloses a process for making a high loft non-woven web. The process includes depositing an array of crimpable spun-bonded bi-component filaments onto a forming surface; heating the deposited filaments to induce relaxation while controlling or minimizing forces which tend to impede crimping of the filaments so as to allow the filaments to crimp in the Z-direction with no more than non-functional bonding; cooling the heated filaments to below the temperature where fibers will bond to induce crimping in the Z-direction while controlling or minimizing forces which tend to impede crimping of the filaments to form a high loft fibrous web having crimped filaments; and through-air bonding the crimped filaments in the fibrous web to form the non-woven web (abstract; numbered paragraphs 8-10; 28-30; claims 15-16; 22).

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Panlanco et al differs from claim 1 in that, Panlanco et al does not teach pattern bonding a fiber web with a total bond area of no more 25% after the web has been heat-treated to crimp the fibers making up the web. However, it would have been obvious in the art to pattern bond a fiber web with a total bond area of no more 25% (say 13%) as such is an art recognized way for making a high loft nonwoven web comprising crimped fibers as exemplified in the teachings of Yeo et al (abstract; examples 1-2; figure 1). There is none, but only the expected result of obtaining a desired pattern bonding area to a fibrous web would have been achieved.

With respect to claim 3, providing a carrier web on an underside surface of a fibrous web is an art recognized effective way for giving support to a fibrous web so that the fibrous web is not damaged during handling and transport especially during transition between spaced conveyors. This is especially desirable for high-loft fiber web as it tends to be damaged during handling and transport. For this reason, this claim would have been obvious in the art.

With respect to claim 7, see numbered paragraph 8 of the Panlanco et al publication.

With respect to claim 8, it would have been obvious in the art to treat a fibrous web with a surfactant as such is an art recognized effective and yet a convenient way to enhance the hydrophilicity of a fibrous web.

With respect to claims 12-15, 17-18 and 20, in view that the fibrous web in Panlanco et al comprises highly crimped fibers, a finished fibrous web must

naturally expandable and elastic at least to a certain degree. Moreover, bonding a high loft fibrous web to an elastic filamentary web is an art recognized effective way for providing an elastic property to a finished laminated web in order to enhance the comfort of users. For these reasons, claims 12-15 and 17-18 would have been obvious in the art. Moreover, since a fibrous web is commonly bonded in the art to a heat-retractable/shrinkable web in order to form a crimped laminate thereby creating an elastic laminate, claim 20 would have been obvious in the art.

With respect to claim 58, see abstract and numbered paragraphs 28-30; figure 1 of the Panlanco et al publication.

With respect to claim 59, in light of the similarity between the claimed process and the process taught by Panlanco et al, the recited property (i.e. the degree fiber web uniformity) of a finished web in this claim is taken to naturally flow from the teachings of Panlanco et al. Additionally, one in the art would have determined, by routine experimentation, a suitable web formation index for the desired end-use of the finished high-loft web. All that would have been needed is to perform a routine task such as adjusting the operating parameters in the process of Panlanco et al.

Note: Where ... the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. **Whether the rejection is based on "inherency" under 35 USC § 102, on prima facie obviousness" under 35 USC § 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO's inability to manufacture products or to obtain and compare prior art**

**products.”** In re Best, 562 F2d 1252, 1255, 195 USPQ 430, 433-4 (CCPA 1977).

3. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references set forth in numbered paragraph 2 as applied to claim 1, and further in view of Shawver et al (US 5,540,976).

Pattern point bonding operation such as spiral pattern is art recognized effective alternative to through-air bonding (TAB) operation for heat-bonding a high loft web comprising crimped fibers, wherein the total bonding area of the pattern bonding is about 5% as exemplified in the teachings of Stokes et al (abstract; col. 8 lines 48-67; col. 9 lines 48-63; col. 10 lines 21-29). Additionally, one in the art would have determined, by routine experimentation, to determine a suitable amount of pattern bonding surface area for the desired end-use of a resultant application. For these reasons, these claims would have been obvious in the art.

4. Claims 9-13, 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references set forth in numbered paragraph 2 as applied to claim 1, and further in view of Shelley et al (US 2002/0089079) and Kobylivker et al (US 6,072,005).

Since: a) depending on the desired end-use of a finished fibrous article, it is well known and conventional in the art to provide a preformed film to a lofty crimped fibrous web as exemplified in the teachings of Shelley (numbered paragraph 1 and numbered paragraph 55 last 7 lines), and b) Kobylivker et al discloses the desirability of bonding a fibrous web to an elastic microporous film to form a breathable and yet liquid impervious laminate (abstract; col. 2 lines 41-49; col. 3

lines 36-44; col. 4 line 50 to col. 5 line 4; figure 5), it would have been obvious in the art to bond an elastic microporous film to a high loft nonwoven web suggested by Panlanco et al.

5. Claims 64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references set forth in numbered paragraph 2 as applied to claim 1, and further in view of Najour et al (US 6,379,136).

Since: a) conventionally formed spun-bonded filaments has a denier range of 2.5-12 as exemplified in the teachings of Najour et al (col. 2 lines 3-13), and b) it is well within the purview of choice in the art to choose a desired filament denier for the desired end-use and properties of a finished non-woven spun-bonded web, these claims would have been obvious in the art.

### ***Response to Arguments***

6. Applicant's arguments filed on 08-30-06 have been fully considered but they are not persuasive.

On page 8 full paragraph 1, Counsel argued that, "Polanco is not available as prior art because both the reference and the instant application have been assigned to the same entity." However, in order to be disqualified as prior art under 35 U.S.C. 103(c), the subject matter which would otherwise be prior art to the claimed invention and the claimed invention must be commonly owned, or subject to an obligation of assignment to a same person, **at the time the claimed invention was made or be subject to a joint research agreement at the time the invention was made.** See MPEP § 706.02(I) for 35 U.S.C.

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102(f)/103 or 35 U.S.C.102(g)/103 prior art disqualified under 35 U.S.C. 103(c) in applications granted as patents prior to December 10, 2004. See MPEP § 706.02(l)(1) for 35 U.S.C. 102(e), (f), or (g)/103 prior art disqualified under 35 U.S.C. 103(c). It is not clear whether at the time the presently claimed invention was made, it was commonly owned or subject to an obligation of assignment to a same person to the Polando reference.

As for Counsel's arguments on pages 8-9 regarding an alternative rejection using the Terakawa reference, these arguments are found to be persuasive, especially in light of the following newly discovered references: Davies et al (US 3,595,731) and Carey, Jr. (US 4,551,378). Just like the Terakawa reference, both of these references teaches heating a fibrous web to simultaneously crimp and bond fibers making up the web. For these reasons, the rejection of the claimed invention using the Terakawa reference has been withdrawn.

In response to this office action, it is strongly suggested for Applicant to cancel all product claims in order to move this application forward.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Richard Crispino can be reached on (571) 272-1171. The fax phone



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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Sam Chuan C. Yao  
Primary Examiner  
Art Unit 1733

Scy  
12-23-06